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In the Supreme Court of the United States

OCTOBER TERM, 1956

THE IVANHOE IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

COURTNEY MCCRACKEN, ET AL.

THE MADERA IRRIGATION DISTRICT AND THE STATE OF CALIFORNIA, APPELLANTS

v.

CARL F. STEINER, ET AL.

THE MADERA IRRIGATION DISTRICT, APPELLANT

v.

PHILLIP AND JANE E. ALBONICO

THE SANTA BARBARA COUNTY WATER AGENCY, APPELLANT

v.

MAURICE A. BALAAM, ET AL.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF JURISDICTION

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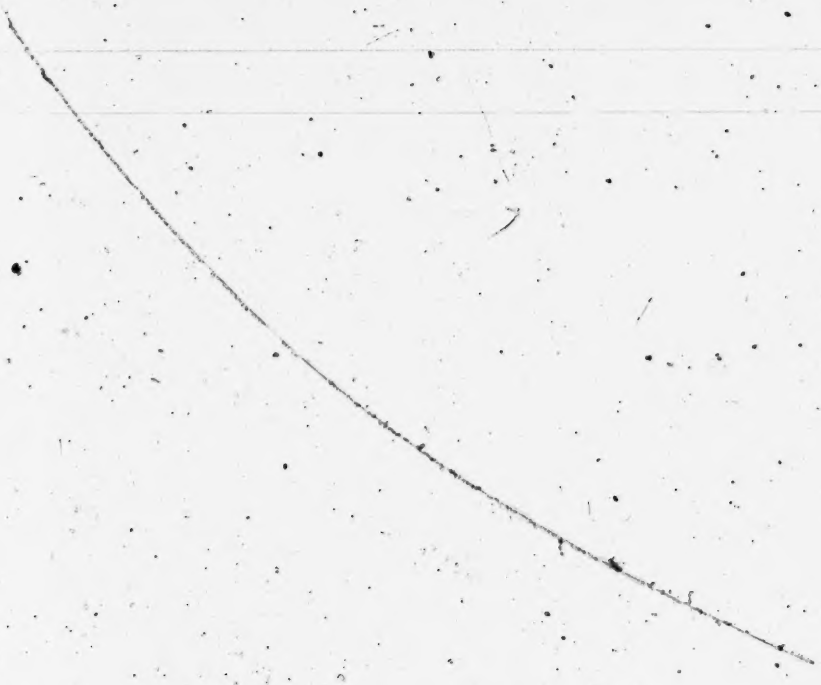

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I

THE UNITED STATES IS VITALLY INTERESTED IN THESE CASES

The United States has a direct interest in the outcome of these cases from several standpoints. Most immediate is the administration of the Central Valley project, a "gigantic" reclamation project which is described in broad outline in *United States* v. *Gerlach Live Stock Co.*, 339 U. S. 725. Operation of the project has required execution of several contracts with substantially the same provisions as that with the Ivanhoe Irrigation District. Chief Justice Gibson does not, we believe, overstate the case when he says in his dissent that the *Ivanhoe* decision "undermines the very foundation of federal reclamation policy and threatens to end the flow of federal funds into this state for reclamation and irrigation purposes at a time when the need for rapid development of our water resources is most critical" (Appendix to Jurisdictional Statement, p. 64, hereafter cited as Jur. St. App.). In view of the positive directions of Congress, the prohibition against inclusion of the questioned provisions in the contract creates a problem of major proportions with regard to the Central Valley project.

The *Santa Barbara* case, which involves a proposed contract with regard to waters of the Cachuma federal reclamation project, shows that the scope of these decisions goes even beyond the Central Valley project and creates extremely serious obstacles to the execution of federal reclamation laws throughout California.

Nor is the impact of the decisions limited to California. The subjects dealt with, especially the 160-acre limitation and the repayment provisions, are generally applicable throughout the 17 western states. These decisions are obviously therefore of great importance to the entire federal reclamation program.

II

THE UNITED STATES TAKES THE POSITION THAT THE CONTRACTS ARE VALID AND THAT THE DECISIONS MISCONSTRUE AND MISAPPLY FEDERAL LAW

While the United States is not a party to these cases, counsel for the Bureau of Reclamation appeared as *amicus curiae* in the trial court in the *Ivanhoe* case to state the federal position (Jur. St. App., pp. 3–4). That position is that the provisions of the contracts are valid and, in fact, are compelled by the federal reclamation law which is wholly constitutional. The same position was likewise stated to the Supreme Court of California in a Memorandum as *Amicus Curiae* Filed by the United States in Connection with the Petitions for Rehearing.

We believe that the majority opinions in these cases have, in many particulars which will not now be discussed, misconceived the basis for the power exercised by Congress, the correct construction and application of the federal statutes, and the results which follow therefrom. The United States intends, in the event that probable jurisdiction is noted, to explain and clarify these matters as *amicus curiae*.

An example, illustrative of the issues of great constitutional importance presented by the litigation, may be noted here. The opinions of the Supreme Court of California recognize the fact that the United States has acquired the water rights of many landowners in the Central Valley by purchase or by payment of judgments in proceedings under the power of eminent domain. The situation in *United States v. Gerlach Live Stock Co.*, 339 U. S. 725, holding that the United States had taken and was required to compensate several owners of lands along the San Joaquin River is typical of the latter category. There is no indication that the title which was acquired in those transactions was anything less than or different from that possessed by the Government's grantor or the party from whom title was acquired. Nevertheless, the majority opinion seems to hold that the United States is not the absolute owner of the rights so acquired. Such a discrimination and attempted limitation of the rights of the United States, as contrasted with those of other owners of water rights, would be a violation of the rights of the United States under the Federal Constitution, especially Article I, sections 8 and 10; Article IV, section 3; Article VI; and Amendment XIV. As the court expressed it in *Clackamas County, Oregon* v. *McKay*, 226 F. 2d 343, 345 (C. A. D. C.), certiorari denied, 350 U. S. 904:

> When the United States acquires, by eminent domain or otherwise, a tract of land in a State, it becomes the owner, and thereafter disposition is within the unfettered discretion of Congress. No overriding sovereign governmental author-

ity of the State impinges upon that discretion or gives rise to power on the part of courts to interfere with that disposition.

Clearly, the same principle should apply to the property represented by water rights acquired by the United States within a state.

CONCLUSION

We believe that issues of federal law of tremendous concern to the entire reclamation program are here presented and that probable jurisdiction should be noted.

Respectfully submitted,

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